

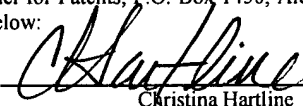


DAC # 2700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: §
Donald L. Nisley et al. § Group Art Unit: 3726
§
Serial No.: 09/938,888 §
§
Filed: August 24, 2001 §
§
For: SYSTEM AND METHOD FOR §
MOUNTING A SHAFT WITHIN A §
HOLLOW MEMBER §
§
Atty. Docket: DODG:0045/YOD/EUB
01RE151

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:	
November 1, 2005 Date	 Christina Hartline

APPLICATION FOR PATENT TERM ADJUSTMENT

Dear Sir:

Pursuant to 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment for the above-identified patent application. The Commissioner is authorized to charge \$200.00 for this application for patent term adjustment, as set forth in 37 C.F.R. § 1.18(e), to Deposit Account No. 01-0857; Order No. 01RE151 (DODG:0045/YOD).

The present application issued as U.S. Patent No. 6,939,053 on September 6, 2005, which incorrectly noted a patent term adjustment of 29 days. Applicants respectfully submit that the correct patent term adjustment for the patent issuing from the present application is at least 730 days and no more than 850 days, as discussed in greater detail below. Particularly, the issuance of the patent resulting from the above-identified

11/08/2005 WABDEL3 00000048 010857 09936886

01 FC:1455 200.00 DA

application was delayed due to: 1) the failure of the Office to mail at least one of a notification under 35 U.S.C. § 132 or a Notice of Allowance under 35 U.S.C. § 151 within fourteen months of the date on which the application was filed under 35 U.S.C. § 111(a); and 2) the failure of the Office to issue the patent within four months of the date on which the issue fee was paid under 35 U.S.C. § 151 and all outstanding requirements were satisfied.

Office Delay

Applicants respectfully note that the present patent application was filed on August 24, 2001. Further, the Office mailed a Notice of Allowance on March 4, 2004, well after the fourteen-month date specified in 37 C.F.R. § 1.703(a)(1). Noting that the fourteen-month date was October 24, 2002, and that the Notice of Allowance was mailed 497 days beyond this date on March 4, 2004, Applicants respectfully note that the patent resulting from the present application is entitled to a 497-day patent term adjustment to compensate for this delay. Indeed, the present Office calculation already acknowledges this 497-day Office delay in its calculation of patent term adjustment.

Applicants also respectfully submit that the issue fee was received by the Patent Office on May 18, 2004, and there were no outstanding requirements at the time of such payment. Applicants respectfully note that the Office is given four months from receipt of the issue fee payment, and satisfaction of any outstanding requirements, to issue the patent. Any period of time after this four-month date is considered delay on the part of the Office. Applicants respectfully note that the four-month date in the present case was September 18, 2004, and that the patent issued on September 6, 2005, a delay of 353 days. Consequently, Applicants further note that the patent resulting from the above-referenced application is entitled to an additional 353-day patent term adjustment.

For these reasons, Applicants respectfully submit that the appropriate period of adjustment due to examination delay under 37 C.F.R. § 1.703 is 850 days.

Applicant Delay

Additionally, Applicants respectfully traverse the determination by the Office of 468 days of delay on the part of Applicants. First, with reference to the Office's PAIR system, Applicants believe the Office attribution to Applicants of 468 days of delay is based on two clerical errors committed by the Office. In the first instance, the Office has calculated a 120-day delay of Applicants based on submission of formal drawings on May 18, 2004. Applicants, however, respectfully note that the only formal drawings submitted to the Office with respect to the present application were those originally filed with the application on August 24, 2001. Further, in the Notice of Allowance mailed March 4, 2004, the Examiner indicated acceptance of these formal drawings. Consequently, Applicants respectfully submit that the 120-day calculation by the Office of delay by Applicants with respect to any drawing requirement is clearly erroneous.

In the second instance, the Office has calculated a 348-day delay of Applicants with respect to payment of the issue fee. Applicants note that the issue fee for the above identified case was due on June 4, 2004. Further, Applicants paid this issue fee on May 14, 2004, and the Office received this payment on May 18, 2004. However, the Office did not *verify* payment of the issue fee until May 18, 2005, 348 days after the due date. Applicants respectfully submit that the one-year delay by the Office in verifying the payment of the issue fee cannot be reasonably attributed to Applicants. In fact, as the issue fee payment is noted as being verified *exactly* one year after receipt of the payment in the Office, Applicants note that this delay is likely a result of a data-entry error on the part of the Office. In any case, Office failure to verify an issue fee payment cannot reasonably be considered delay by Applicants and cannot reasonably reduce the patent term adjustment to which Applicants are otherwise entitled.

Finally, Applicants note that an Information Disclosure Statement was filed on March 11, 2004, one week after the Notice of Allowance mailed on March 4, 2004. Applicants respectfully note that, although Applicants received a return postcard

indicating receipt of this Information Disclosure Statement, the Information Disclosure Statement does not appear on the image file wrapper of the above identified application. Because it appears that this Information Disclosure Statement has been lost by the Patent Office, Applicants respectfully submit that this Information Disclosure Statement cannot be reasonably considered to have delayed prosecution of the above-identified application. However, should the Office believe this Information Disclosure Statement caused delay attributable to Applicants under 37 C.F.R. § 1.704(c)(10), Applicants note that this delay cannot be greater than 120 days.

For these reasons, Applicants respectfully note that, under 37 C.F.R. § 1.704, the reduction of the period of adjustment noted above can be no more than 120 days.

Terminal Disclaimer

Pursuant to 37 C.F.R. § 1.705(b)(2)(iii), Applicants respectfully note that the patent issuing from the above-identified case is not subject to a terminal disclaimer.

Conclusion

As discussed above, Applicants respectfully submit that the period of adjustment due to examination delay is 850 days and that the reduction of this period as a result of delay by the Applicants is either 0 days or 120 days. Thus, pursuant to 37 C.F.R. § 1.703(f), Applicants are entitled to a patent term adjustment of either 730 days or, in the alternative, 850 days.

In view of the remarks set forth above, Applicants respectfully request reconsideration of the patent term adjustment for the above-identified application. If an Office representative believes that a telephonic interview will be of assistance, the representative is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: November 1, 2005

79
Patrick S. Yoder
Reg. No. 37,479
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545

CORRESPONDENCE ADDRESS
ALLEN-BRADLEY COMPANY, LLC
Patent Department/704P Floor 8 T-29
1201 South Second Street
Milwaukee, Wisconsin 53204
Attention: Mr. Alexander Gerasimow
Phone: (414) 382-2000